



Janet Napolitano
Governor

Victor M. Mendez
Director

NEW APPLICATION
ORIGINAL
Arizona Department of Transportation
Office of the Director

206 South Seventeenth Avenue Phoenix, Arizona 85007-3713



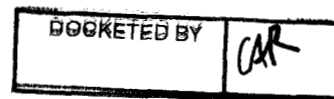
Debra R. Brisk
Deputy Director

May 13, 2004

Railroad Safety Supervisor
Arizona Corporation Commission
1210 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

MAY 20 2004



AZ CORP COMMISSION
DOCUMENT CONTROL

2004 MAY 20 A 8:25

RECEIVED

RE: TRACS No. 0940 MA PHX SR176 01C
Project No. STP-000-6(157)P
RAIL/HIGHWAY SAFETY PROGRAM
University Drive (Phoenix)
Union Pacific Railroad Company
AAR/DOT No: 748-702-P

RR-03639A-04-0378

Dear Mr. Thompson:

Please furnish our office with an Opinion and Order to cover the installation of Signals described in the subject agreement. An agreement covering the work has been signed by the Railroad Company. A copy is attached for your information and files.

After we receive the Opinion and Order, we will send you a copy of our letter authorizing the Railroad to proceed with the work.

Sincerely,

John Syers, Railroad Engineering Coordinator
Utility & Railroad Engineering Section
205 South 17th Ave, RM 357, MD 618E
Phoenix, AZ 85007-3212
(602) 712-7541

Attachment



2001 Award Recipient



Jane Dee Hull
Governor

Mary E. Peters
Director

Arizona Department of Transportation

Intermodal Transportation Division

Utility & Railroad Engineering Section

205 S. 17th Ave. Mail Drop 618E Phoenix, Arizona 85007

Phone 602.712.7541 Fax 602.712.3229

Dick Wright
State Engineer

July 27, 2001

RAILROAD CROSSING PROJECT

TRACS No.: 0940 MA PHX SR176 01C

Project No.: STP-000-6(157)P

Location: University Drive (Phoenix)

AAR/DOT No.: 748-702-P

ADOT Accounting No.: R1532BC01

RAILROAD AGREEMENT

For

FEDERAL AID

Railroad Crossing Projects

UNION PACIFIC RAILROAD COMPANY

Agreement No. 1532-91-SPTC

RAIL/HIGHWAY SAFETY PROGRAM

SUMMARY OF ESTIMATE

	ADOT	ACC	Total
	@94.3%	@5.7%	
Preliminary Engineering:	\$7,767.00	\$470.00	\$8,237.00
Construction:			
Signals	<u>\$105,659.00</u>	<u>\$6,387.00</u>	<u>\$112,046.00</u>
	\$113,426.00	\$6,857.00	*\$120,283.00

* Railroad will invoice ADOT for 100% of total work.
 Railroad will separate Preliminary Engineering costs
 from Construction costs. ADOT will pay Railroad
 100% of total invoice and invoice ACC for its portion.

TRACS No. 0940 MA PHX SR176 01C
 Project No. STP-000-6(157)P
 Agreement No. 1532-91-SPTC
 EXHIBIT "A"
 Sheet 1 of 2

DATE: 2001-07-10

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:

INSTALL AC/DC TRACK CIRCUIT AND LED FL SIG. W/GATES IN D.F. CASE AT
UNIVERSITY DRIVE IN PHOENIX, AZ. M.P. 908.45 ON THE PHOENIX SUB.

SIGNAL PROJECT MANAGER: LEE BURDEN 935-7680

RAILROAD TO PERFORM ALL WORK/COST DISTRIBUTED AS FOLLOWS:

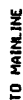
SIGNAL - FEDERAL GOVERNMENT 90% STATE OF ARIZONA 10%

PID: 38581 AWO: 01156 MP,SUBDIV: 908.45, PHOENIX
SERVICE UNIT: 16 CITY: PHOENIX STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			1019		1019		1019
LABOR ADDITIVE			3503		3503		3503
RECOLL-INSPE			2237		2237		2237
SIG-HWY XNG			1478		1478		1478
TOTAL ENGINEERING			8237		8237		8237
SIGNAL WORK							
BILL PREP			900		900		900
CONTRACT				3667	3667		3667
EARTH FILL/ROCK				500	500		500
EQUIPMENT RENTAL				3000	3000		3000
FOREIGN LINE FREIGHT				733	733		733
LABOR ADDITIVE			15330		15330		15330
MATL STORE EXPENSE				1833	1833		1833
PERSONAL EXPENSES				11347	11347		11347
SALES TAX				1467	1467		1467
SIGNAL			20716	36676	57392		57392
TRANSPORTATION CHARGES				4035	4035		4035
USAGE EQUIPMENT				3822	3822		3822
WZ TRAFFIC CONTROL				5124	5124		5124
TOTAL SIGNAL			36946	72204	109150		109150
TRACK & SURFACE WORK							
LABOR ADDITIVE			212		212		212
MATL STORE EXPENSE				99	99		99
OSM				757	757		757
OTM			524	1225	1749		1749
SALES TAX				79	79		79
TOTAL TRACK & SURFACE			736	2160	2896		2896
LABOR/MATERIAL EXPENSE			45919	74364			
RECOLLECTIBLE/UPRR EXPENSE					120283	0	
ESTIMATED PROJECT COST							120283
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

TRACS No. 0940 MA PHX SR176 01C
Project No. STP-000-6(157)P
Agreement No. 1532-91-SPTC
EXHIBIT "A"
Sheet 2 of 2



*16 AWG FLEX
ALL BUNGALOW WIRING TO BE
UNLESS OTHERWISE SPECIFIED
WIRE TO BE #6 AWG FLEX OR LARGER
REFER TO UP STANDARD DWG. FOR BUNGALOW
GROUNDING.
DO NOT USE 7 CELLS OF B12 BATTERY UNLESS
REQUIRED TO MAINTAIN MINIMUM LOOP VOLTAGE

TWISTED WIRES
 ALL TRACK WIRES 2C. #6
 INSULATED 1 TWIST PER FT.
 TRANSMITTER AND RECEIVER LEADS
 TO BE SEPARATED BY AT LEAST 12" IN TRENCH.
 LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
 RECOMMENDATION.

TOP OF FOUNDATION TO BE AT SAME ELEVATION AS THE SURFACE OF THE TRAVELED WAY & NO MORE THAN 4" ABOVE THE SURFACE OF THE GROUND. ALL BUNGALOW WIRING TO BE #6 AND FLEX UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND WIRE TO BE #6 AND FLEX OR LARGER. REFER TO UP STANDARD DWG. FOR BUNGALOW GROUNDING.

DO NOT USE 7 CELLS OF B12 BATTERY UNLESS
REQUIRED TO MAINTAIN MINIMUM LAMP VOLTAGE.

ALL LIGHTS TO BE 12" DIAMETERS.
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 103

LIGHTS: A & B IED LIGHTS

DATE A: 28'

GATE B, 20'

CATU CELLÉME TAY

NOIS STOP SIGN

PHOENIX, ARIZONA
UNIVERSITY DRIVE
M.P. 900.45
PHOENIX BUSINESS SPUR
OFF PHOENIX SUBDIVISION
P.O. BOX 702P
PHOENIX, ARIZONA 85001-0702

NEW SHEET


W ← O → E

INSTALL DATES,
FLASHERS AND AC/DC
CIRCUITS AT
W.P. 908.45
W.O. 01156 / JTD
/ 02/09/1991

--	--

.

.



1

--	--

1

--	--

10

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

Agreement No. 1532-91-SPTC

Agreement Addendum No. 1

Company's Name: The Union Pacific Railroad Company
Address: 101 S. Watson Road, Arlington, TX 76010

The purpose of this addendum is to modify the Company name as stated herein:

WHEREAS: Agreement No. 1532-91-SPTC terms the "RAILROAD" as SOUTHERN PACIFIC TRANSPORTATION COMPANY.

WHEREAS: Agreement No. 1532-91-SPTC is revised to term the "RAILROAD" as the UNION PACIFIC RAILROAD COMPANY.

THEREFORE: The parties hereto agree that Agreement No. 1532-91-SPTC is hereby amended as shown herein. All other provisions of Agreement No. 1532-91-SPTC shall remain unabrogated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

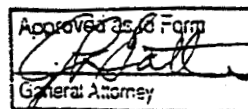
UNION PACIFIC RAILROAD COMPANY

By *William R. Briscoe*
WILLIAM R. BRISCOE, P.E.
Utility & Railroad Engineering Section

By *Thomas J. Gage*
CHIEF ENGINEER

ate 2-18-99

Date _____



**ARIZONA DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION**

UTILITY AND RAILROAD ENGINEERING SECTION

MASTER
RAILROAD AGREEMENT
For
FEDERAL AID
Railroad Crossing Projects

SOUTHERN PACIFIC TRANSPORTATION COMPANY
Agreement No. 1532-91-SPTC
RAIL/HIGHWAY SAFETY PROGRAM

THIS AGREEMENT by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein termed "RAILROAD," and STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, herein termed "STATE".

WITNESSETH:

The parties hereto desire to set forth by this instrument their understanding and agreements with respect to the installation, at various times, of railroad warning devices and/or surface crossing materials with track rehabilitation, if required, throughout the State of Arizona, where a roadway crosses the property and tracks of RAILROAD.

AGREEMENT:

NOW THEREFORE, it is mutually agreed as follows:

1. The work to be performed by RAILROAD under this agreement is hereinafter referred to as "PROJECT".

2. RAILROAD agrees to furnish all labor, materials, tools, and equipment necessary to install such warning devices including necessary actuating and operating circuits and adequate instrument housing and/or roadway crossing materials with track rehabilitation, if required, upon its property at certain designated grade crossings.

Said installation shall comply with the latest standards prescribed by the Association of American Railroads and the Manual On Uniform Traffic Control Devices, Part VIII.

3. RAILROAD will prepare both a cost estimate, marked Exhibit "A" and a location plan marked, Exhibit "B", showing the general details of each PROJECT and send them to STATE for acceptance.

4. It is agreed that the work to be performed by RAILROAD is a part of a Federal-Aid project. Pursuant to the provisions of Federal-Aid Policy Guide Subchapter G, Part 646 Subpart B, there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in furnishing of materials and performing the work as described in the Cost Estimate, marked EXHIBIT "A", attached to and made a part hereof.

5. It is understood and agreed that the STATE is acting solely as an agent for the project sponsor in securing and administering Federal funds and STATE assumes no other liability hereunder for the project sponsor.

6. Prior to commencing construction of each PROJECT, Railroad agrees to notify STATE, in writing, of the actual construction start date. Upon completion of each PROJECT, RAILROAD agrees to notify STATE, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from STATE. Construction progress payments shall not be made without the actual construction start date. Final payment shall not be made without the actual construction completion date.

7. The work for each PROJECT shall be performed by RAILROAD forces on an actual cost basis, and as supported by the analysis of estimated costs set forth in Exhibit "A". The actual cost shall be payable in payments as follows:

- a. RAILROAD will order the materials for each PROJECT, and may invoice the STATE upon receipt, for materials and related costs, as set forth in Exhibit "A".
- b. RAILROAD may submit monthly invoices for work performed and materials installed unless invoiced under subparagraph a.
- c. Minimum payment, except for final invoice, is \$5,000.
- d. Upon completion of all work under each PROJECT, RAILROAD shall arrange for a joint close-out inspection of the completed PROJECT. Upon determination by STATE that the work has been completed in accordance

with Exhibits "A" and "B", RAILROAD will submit final and complete invoice to the STATE. STATE agrees to pay RAILROAD the difference between the final invoice and any previous payments for PROJECT. Any amount with which STATE disagrees shall be paid under protest, subject to resolution.

- e. All invoices will be paid by STATE within sixty (60) days of receipt.

All expenses incurred by RAILROAD for work which STATE is obligated to reimburse RAILROAD hereunder, including all work incidental to such work but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide Subchapter B Part 140 Subpart I.

8. Pursuant to A.R.S. Sections 35-214, 35-215 and 41-1279.04, the books of RAILROAD shall be open for inspection and audit by authorized representatives of STATE and the Federal Government for a period of not less than five (5) years from the date final payment has been received by RAILROAD. State agrees to pay RAILROAD any sums found to be owing as a result of an audit within sixty (60) days of receipt of the audit by the Utility and Railroad Engineering Section of STATE. RAILROAD agrees to reimburse STATE, within sixty (60) days of notification for any amount STATE disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to STATE under protest subject to resolution.

9. All invoices shall contain STATE's project number and agreement number. The invoice shall be sent to:

ARIZONA DEPARTMENT OF TRANSPORTATION
Utility and Railroad Engineering Section
205 South 17th Ave. Mail Drop 618E
Phoenix, Arizona 85007-3212

10. Once installation of railroad warning devices and/or roadway crossing material has been completed, RAILROAD shall maintain, in kind, the railroad warning devices and the crossing material two feet outside of each rail as long as they remain in place. However, RAILROAD shall be entitled to receive any contribution toward the cost of such maintenance as may be now or hereafter made available by means of any law, ordinance, regulation, order, grant or by other means or sources.

11. Claims and disputes between STATE and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to work performed, invoicing and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

12. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A", attached hereto and by this reference made a part of this Agreement; provided, however, that Appendix "A" shall be applicable only in those cases where RAILROAD does not perform the work contemplated in this Agreement with its own forces.

13. This Agreement is subject to the budgetary limitations set forth in Arizona Revised Statutes Subsection 28-1823 through 28-1826 inclusive and is further subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

14. STATE and RAILROAD each agrees to be liable to the other party for its own acts of negligence and the negligence of its own employees.

15. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of RAILROAD and the assigns of STATE.

16. RAILROAD is required to comply with Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Agreement.

17. Pursuant to A.R.S. Subsection 38-511, STATE may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of STATE or any of its departments or agencies is, at any time while this Agreement or any extension of it is in effect, an employee of any other party to this Agreement with respect to the subject matter of this Agreement.

7 of 7

APPENDIX A
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors. Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time. (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.